Central Washington Hospital *and* Service Employees International Union Local 6, AFL–CIO

St. Joseph Hospital *and* Service Employees International Union Local 6, AFL–CIO

Universal Health Systems, Inc. of Pennsylvania d/b/a Auburn General Hospital *and* Service Employees International Union Local 6, AFL–CIO

Universal Health Systems, Inc. of Pennsylvania d/b/a The Riverton Hospital *and* Service Employees International Union Local 6, AFL–CIO

Highline Community Hospital *and* Service Employees International Union Local 6, AFL–CIO

Saint Cabrini Hospital of Seattle *and* Service Employees International Union Local 6, AFL–CIO

Ballard Community Hospital *and* Service Employees International Union Local 6, AFL–CIO

Virginia Mason Hospital *and* Service Employees International Union Local 6, AFL–CIO. Cases 19–CA–17786, 19–CA–17787, 19–CA–18186, 19–CA–18189, 19–CA–18192, 19–CA–18487, 19–CA–18488, 19–CA–18489, and 19–CA–18490

June 18, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On October 1, 1990, Administrative Law Judge William L. Schmidt issued the attached decision. All the Respondents[1] except Riverton Hospital and Saint Cabrini Hospital of Seattle filed exceptions and supporting briefs, the Union filed an answering brief, the General Counsel filed limited cross-exceptions and a supporting and answering brief, and Respondent Auburn General Hospital filed an answering brief to the General Counsel's cross-exceptions.[2]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[3] and conclusions[4] and to adopt the recommended Order.[5]

In adopting the judge's conclusion that the affiliation between the Licensed Practical Nurses Association of Washington State (LPNAWS) and Service Employees International Union Local 6, AFL–CIO (Local 6) met the Board's continuity-of-representative test, we disavow any implication by the judge that his analysis is inconsistent with precedent. In considering continuity, the Board examines numerous factors and makes its determination based on the ''totality of a situation'' rather that the ''presence or absence of certain cited criteria.''[6] We find that the judge did not deviate from this approach.

Significant to our adoption of the judge's continuity finding is the fact that, as the judge found, after LPNAWS's affiliation with Local 6, each LPN bargaining unit retained autonomy in the areas of development of collective-bargaining proposals, contract acceptance or rejection, calling of strikes, and grievance handling.[7] Each unit continued to select its own unit chair, comparable to a shop steward, to serve as a conduit between the unit and Local 6 officials. Additionally, the same labor relations professional who carried out LPNAWS's collective-bargaining and grievance-handling responsibilities almost single-handedly before the affiliation continued to function, with increased staff support, in basically the same role for Local 6 after the affiliation.[8]

[1] Case 19–CA–17816, concerning St. Luke's General Hospital, and Case 19–CA–18479, concerning Yakima Valley Memorial Hospital, which had been consolidated with the above-captioned cases for decision by the judge, were severed from these cases by a Board Order on January 10, 1991.

[2] Respondents Central Washington Hospital, Highline Community Hospital, Ballard Community Hospital, and Virginia Mason Hospital filed a motion to reopen the record, which Respondent Auburn General Hospital joined. All moving parties except the latter subsequently moved to withdraw the motion. The motion to reopen the record is denied.

We grant the General Counsel's motion to strike as premature the portion of Respondent St. Joseph Hospital's brief seeking costs and attorneys' fees pursuant to the Equal Access to Justice Act.

[3] We adopt the judge's finding that the charge against Respondent Virginia Mason Hospital was timely because Virginia Mason, a member of the Seattle Area Hospital Council (SAHC), was bound by the 1984–1986 collective-bargaining agreement between SAHC and the Licensed Practical Nurses Association of Washington State (LPNAWS) covering a multiemployer unit, and because it had not retained independent authority to refuse to recognize the Union as the representative of Virginia Mason's licensed practical nurses (LPNs). In so finding, we note that the SAHC-LPNAWS collective- bargaining agreement, which set terms and conditions of employment for LPNs at Virginia Mason and five other hospitals, defined SAHC as the employer, and the agreement's recognition article extended recognition from SAHC to LPNAWS. Accordingly, the 6-month limitation period of Sec. 10(b) was not triggered by any communications from Virginia Mason to its LPNs or Local 6 in the latter half of 1985 indicating that Virginia Mason would not grant recognition to Local 6.

[4] We adopt the judge's conclusion that the Respondents were precluded from asserting as a defense to the 8(a)(5) allegation that the LPN units were inappropriate. We therefore find it unnecessary to pass on the General Counsel's exception to the judge's failure to find that Respondent Auburn General Hospital was estopped on other grounds from challenging the appropriateness of the unit represented by Local 6.

We grant the General Counsel's exception to the failure of the judge to include in Conclusion of Law 1 a finding that the Respondents are health care institutions within the meaning of Sec. 2(14) of the Act. We modify the judge's decision to so find.

[5] In adopting the judge's remedy and recommended Order, we leave to the compliance stage any question concerning the duration of the dues-reimbursement requirement.

[6] *News/Sun-Sentinel Co.*, 290 NLRB 1171, 1177 (1988) (quoting *Yates Industries*, 264 NLRB 1237, 1250 (1982)), enfd. 890 F.2d 430, 432 (D.C. Cir. 1989) (''In assessing continuity, the NLRB does not run down a checklist of 'certain cited criteria'''). Accord: *May Department Stores Co. v. NLRB*, 897 F.2d 221, 228 (7th Cir. 1990), cert. denied 111 S.Ct. 245 (1990) (''No strict check-list is used'').

[7] See, e.g., *News/Sun-Sentinel Co.*, supra, 290 NLRB 1171 fn. 1 (continuity of representative found where, among other things, ''the chapel's own authority over collective bargaining and contract administration matters remained substantially unaltered by the merger''); *Seattle-First National Bank*, 290 NLRB 571, 573 (1988) (continuity found where ''autonomy essentially remained at the local level, including day-to-day contract administration, handling of grievances, control of collective bargaining, and the calling of strikes'').

[8] Nor did the affiliation result in a marked change in membership dues. The affiliation agreement set dues for full-time nurses at $12.50 per month for a

Contrary to the Respondents' contentions, the fact that Local 6 or its parent International possessed formal authority under their governing documents to take actions such as negotiating contracts, vetoing strikes, or deciding which grievances to process does not militate against a finding of continuity, because, in practice, such authority was rarely, if ever, exercised.[9] It is the actual practice, rather than the formal authority, that is controlling.[10]

In arguing a lack of continuity between LPNAWS and Local 6, the Respondents particularly note that only one officer of LPNAWS became an officer of Local 6. This fact is, no doubt, a reflection of the somewhat unusual nature of the affiliation in this case. Under the LPNAWS-Local 6 affiliation agreement, LPNAWS did not cease its existence but, rather, transferred its bargaining representative functions to Local 6 while retaining its traditional LPN professional and educational functions, which predated its collective-bargaining role. At the annual convention at which it approved affiliation with Local 6, LPNAWS elected its own officers and directors. It also elected six members of Local 6's eight-member LPN division board, three of whom would serve on Local 6's 18-member executive board and one on Local 6's board of trustees. Thus, although only one LPNAWS officer became a Local 6 officer, LPNAWS had a significant role in choosing Local 6 officials.[11]

Moreover, the affiliation of LPNAWS, with its 1100 members, represented a significant increase in membership to Local 6, which had a preaffiliation memership of 5400. These proportions contrast sharply with cases such as *Western Commercial Transport*, 288 NLRB 214 (1988), and *Quality Inn Waikiki*, 297 NLRB 497 (1989), in which it was found that mergers failed to maintain continuity of representative. In *Western Commercial*, a union representing 8500 employees accepted the affiliation of a 45-member union representing 136 employees, a number too small to elect even 1 district lodge delegate following affiliation. In *Quality Inn*, the merger of a local with 500 members was found to greatly diminish their influence in union affairs, where the local was merged with a union that had 10,000 members. Unlike those cases, here the nurses formerly represented by LPNAWS clearly have a voice and representation in the leadership of Local 6.

Accordingly, based on the foregoing reasons and those set forth by the judge, we adopt the judge's conclusion that substantial continuity of representation was maintained in LPNAWS's affiliation with Local 6.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Central Washington Hospital, Wenatchee, Washington; St. Joseph Hospital, Bellingham, Washington; Universal Health Systems, Inc. of Pennsylvania d/b/a Auburn General Hospital, Auburn, Washington; Universal Health Systems, Inc. of Pennsylvania d/b/a the Riverton Hospital, Seattle, Washington; Highline Community Hospital, Seattle, Washington; Saint Cabrini Hospital of Seattle, Seattle, Washington; Ballard Community Hospital, Seattle, Washington; and Virginia Mason Hospital, Seattle, Washington; their officers, agents, successors, and assigns, shall take the action set forth in the Order.

Patrick Dunham and *Scott F. Burson, Esqs*., for the General Counsel.

Larry E. Halvorson and *Mark Barry, Esqs. (Davis, Wright & Jones)*, of Bellevue, Washington, for Respondents Ballard Community, Central Washington, St. Luke's, and Virginia Mason Hospitals.

Gary Lofland, Esq. (Lofland & Associates), of Yakima, Washington, for Respondent Yakima Valley Memorial Hospital.

Brian Morrison, Esq. (Garvey, Schubert & Barer), of Seattle, Washington, for Respondent St. Joseph Hospital.

Peter Pantaleo and *Paul A. Tufano, Esqs. (Blank, Rome, Comisky & McCauley)*, of Philadelphia, Pennsylvania, for Respondent Universal Health Services.

William Treverton, Esq. (Conner, Gravrock & Treverton, Inc.), of Bellevue, Washington, for Respondents Saint Cabrini and Highline Community Hospitals.

Lawrence Schwerin, Esq. (Hafer, Price, Rinehart & Schwerin), of Seattle, Washington, for the Charging Party.

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. Service Employees International Union, Local 6, AFL–CIO (Local 6 or Union) filed the charges listed in the caption against the named hospitals (collectively Respondents) on the following dates: Central Washington Hospital (Respondent Central) and St. Joseph Hospital (Respondent St. Joseph), Case 19–CA–17787, on September 13, 1985; Respondent St. Joseph, Case 19–CA–18186, on April 3, 1986; St. Luke's General Hospital (Respondent St. Luke's) on September 25, 1985; Universal Health Systems, Inc. of Pennsylvania d/b/a Auburn General Hospital (Respondent Auburn) and Universal Health Systems, Inc. of Pennsylvania d/b/a The Riverton Hospital (Re-

period of 1 year, after which dues were to be set in accordance with Local 6's constitution and by laws. This rate provision does not appear to represent a sharp change. The preaffiliation dues rate for LPNs at Virginia Mason Hospital, for example, was $10.42 per month.

[9] For example, only once in 5 years has Local 6's president reversed a decision about pursuing a grievance; similarly, the International would refuse to authorize a strike only if the strike were illegal.

[10] See *Seattle-First National Bank v. NLRB*, 892 F.2d 792, 799 (9th Cir. 1990), cert. denied 110 S.Ct. 2618 (1990).

[11] Although the Respondents note that Local 6's bylaws require an individual to be a member for 2 years before running for office, this requirement was waived for LPNAWS members. The Respondents also contend that the role of Local 6's new LPN division board, created as part of the affiliation, was largely advisory and, thus, without power. The function of the LPN division, however, paralleled that of Local 6's three preexisting divisions and thus the LPN division was not simply a facade.

spondent Riverton) on April 7, 1986;[1] Yakima Valley Memorial Hospital (Respondent Yakima) on July 24, 1986; Highline Community Hospital (Respondent Highline), Saint Cabrini Hospital of Seattle (Respondent Cabrini), Ballard Community Hospital (Respondent Ballard) and Virginia Mason Hospital (Respondent Mason) on July 28, 1986.[2]

Based on the listed charges, the Regional Director for Region 19 of the National Labor Relations Board (NLRB or Board) consolidated the cases and issued a consolidated complaint on September 11, 1986, and noticed the complaint for hearing before an administrative law judge.[3]

The essence of the complaint is that Respondents violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by their refusal to recognize and bargain with Local 6 as the exclusive representative of the licensed practical nurses (LPNs) employed by Respondents following the affiliation of the Licensed Practical Nurses Association of Washington State (LPNAWS) with Local 6 in July 1985. The complaint further alleges that Respondent St. Joseph also violated the same section of the Act by dealing directly with its LPNs and establishing new employment conditions for them without providing Local 16 with notice of the proposed changes or an opportunity to bargain about any changes. Additionally, the complaint alleges that Respondents Auburn and Riverton refused to provide Local 6 with information related to the distribution of money from a terminated pension trust covering the LPNs employed by them which was essential to the performance of its duties as the bargaining representative of those LPNs.

Respondents filed timely answers denying that they committed the unfair labor practices alleged. Some interposed affirmative defenses discussed below.

I heard this matter on August 6 and 7, 1988, at Seattle, Washington. From this record,[4] including my observation of the demeanor of the witnesses, and my careful consideration of the posthearing briefs filed by the General Counsel, Local 6, and each of Respondents, I conclude that Respondents engaged in the unfair labor practices alleged based on the following

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. *LPNAWS and Local 6 Before July 1985*

LPNAWS is a nonprofit association established several decades ago to serve the needs of licensed practical nurses in the State of Washington. Association policies are established by its executive board—which serves as the governing body between annual conventions—and administered under the direction and supervision of its executive director, a full-time paid employee of the association. LPNAWS encompasses 21 subordinate district associations located throughout the State of Washington which also have their own officers and executive boards.

Historically, LPNAWS represented LPN interests before the state legislature and state regulatory agencies, and conducted continuing education programs for the benefit of its LPN members. In the past two or three decades, LPNAWS became involved extensively in collective-bargaining activities to establish wages and working conditions for LPNs.[5]

By July 1985, LPNAWS was the recognized representative of approximately 1500 to 1700 employees employed at 39 public and private hospitals throughout the State of Washington.[6] These employees were grouped together in 34 separate bargaining units limited almost exclusively to LPN employees.[7]

Respondents,[8] which are acute care facilities, were among the locations where the LPNAWS was recognized as the exclusive representative for LPN units. Frances McGarvie, the LPNAWS executive director from 1968 until her retirement in 1986, recalled that bargaining relationships already existed or commenced shortly after her 1968 appointment at St. Cabrini, St. Joseph, St. Luke's, and Yakima; LPN bargaining commenced at Auburn, Virginia Mason, and Ballard in 1969; Central Washington LPN bargaining relationship began in 1971; and bargaining relationships at Highline and Riverton commenced in 1978 and 1984, respectively. These relationships were initiated when the respective hospitals voluntarily recognized the LPNAWS.

Separate LPN units were certified by the Board at Auburn and Yakima in NLRB Cases 19–RC–10470 (1982) and 1–RC–7922 (1976), respectively, of which I take official notice. Elections at both locations were conducted pursuant to stipulations for certification upon consent election which include, among other matters, an agreement of the parties concerning unit composition.

The affiliation at issue here occurred during the term of the collective-bargaining agreements with Respondent hospitals. One agreement with the Seattle Area Hospital Council (SAHC), a multiemployer organization, applies to six Seattle area hospitals, including Respondents Ballard, Highline, Riverton, St. Cabrini, and Virginia Mason; the remaining LPNAWS agreements involve single hospital units. The most recent LPNAWS agreements were effective for the following terms: SAHC, September 26, 1984, through August 31, 1986; Auburn, October 26, 1984, through August 31, 1986;

[1] The Respondent Auburn and the Respondent Riverton charges were amended on April 30, 1986.

[2] The Respondent Mason charge was amended on August 14, 1986.

[3] The complaint caption reflects additional cases and parties. Those matters not listed in the caption here have been severed on the basis of a settlement or adjustment and are no longer a part of this proceeding. The caption has been amended accordingly.

[4] The record includes the transcript and exhibits of a 3-day hearing before the Washington Public Employees Relations Commission (PERC) concerning charges brought by Local 6 against four public hospitals. The core of that dispute involved the same affiliation matter at issue here.

[5] LPNAWS records indicate that the first collective-bargaining agreement was executed in 1956.

[6] At the same time, LPNAWS's membership numbered approximately 1100 individuals. Not all of its members were employed in LPNAWS-represented bargaining units. The variance in this statistical data appears to result from the fact that not all employees in the represented units chose to be members of LPNAWS while some LPNAWS members were not employed in bargaining unit positions.

[7] McGarvie's testimony at the PERC hearing shows that approximately 20 non-LPN employees, such as technicians or nurses aides, are in the represented units. No units including non-LPNs appear to be involved here; in fact, some units here even exclude LPNs who are not performing LPN functions.

[8] In the year preceding the issuance of the complaint, a representative period, the dollar volume of each Respondent's gross sales of goods and services and their direct inflow exceeded that established by the Board's discretionary standard for asserting jurisdiction over private, nonprofit health care institutions. Based on the volume of direct inflow, I find that the Board has statutory jurisdiction over each Respondent. I further find that it would effectuate the purposes of the Act for the Board to exercise its jurisdiction to resolve the labor dispute found here.

Central Washington, January 1, 1984, through December 31, 1985; St. Joseph, February 6, 1984, through December 31, 1985; St. Luke's, January 19, 1984, through December 31, 1985; and Yakima, December 1, 1984, through October 31, 1986.

Each of the foregoing agreements were executed on behalf of LPNAWS by Sharron Farrell, a full-time associate executive director, who devoted all her worktime to LPNAWS collective bargaining and contract administration activities. Although Farrell was responsible directly to McGarvie and regularly provided status reports to the latter the record overall suggests that significant involvement by McGarvie in unit representation matters cease when Farrell came to LPNAWS. Day-to-day contract administration at the individual hospitals appears to have been performed primarily by unit chairpersons and their assistants. The unit chairs and occasionally district association officials assisted Farrell during contract negotiations.

LPNAWS collective-bargaining activities came under the aegis of the LPNAWS ''Economic Security Program.'' The LPNAWS president was authorized to appoint an Economic Security Committee to oversee these activities. Although this committee on paper appears to provide policy guidance concerning collective-bargaining activities, it met only twice a year and formulated policy only upon Farrell's insistence. Farrell filed written reports quarterly with that committee but otherwise merely provided it with new forms she devised. There is no indication that it played any role in the affiliation which occurred in July even though it appears vested with the power to do so.

Local 6, a geographical subordinate organization chartered by SEIU in 1921, had approximately 5400 members immediately prior to July 1985.[9] It represented employees in a variety of industries grouped in numerous bargaining units. Prior its affiliation with LPNAWS, Local 6 grouped its bargaining units in three separate divisions known as the public division, the private division, and the health care division.

The Local 6 organic documents (its constitution and bylaws) provided for separate, divisional executive boards elected by members of the respective divisions, but these boards were vested with only advisory powers. However, the three divisional executive board members receiving the most votes automatically became members of the Local 6 executive board which established Local 6 policy. In addition to members from the division boards, the Local 6 executive board consisted of two members elected at large and the three executive officers. Other than establishing membership dues levels, the Local 6 executive board policies appear related primarily to political and social causes of interest to the membership. Administration of Local 6 is conducted by its executive officers, its president, vice president, and secretary-treasurer who are elected a large by the entire Local 6 membership.[10] The board of trustees, also selected from the divisional boards is vested with oversight of the financial affairs of Local 6. Local 6 also employed several full-time clerical employees and business representatives.

Prior to its affiliation with LPNAWS, Local 6 represented 200 to 300 LPNs as a part of an overall nonprofessional unit with a single health care employer. This unit was assigned to the Local 6 health care division.

B. *The LPNAWS—Local 6 Affiliation Process*

At an LPNAWS executive board meeting on December 5, 1984, several members from the Tacoma district appeared to urge that the LPNAWS explore affiliation with a labor organization.[11] In response, the LPNAWS executive board unanimously approved resolutions providing for: (1) a recommendation by the executive board to the May 1985 LPNAWS convention to approve affiliation with a union having a health care division; and (2) appointment of a committee to gather information from at least three unions having health care divisions interested in merging with LPNAWS. A search com ittee chaired by William Riley, an LPNAWS member from Tacoma and the bargaining unit chair at the hospital where he worked, was appointed and directed to report its findings to the next executive board meeting. No LPNAWS officer or executive board member served on this committee.

This action was reported in the January 1985 issue of *The LPN Connection*, the LPNAWS membership newsletter mailed to all LPNAWS members. In announcing the action of the executive board, LPNAWS President Marilyn Eckley described the move as ''a mechanism for divesting LPNAWS from major responsibility for its [collective-bargaining activities].'' The publication contained a page-long article by Executive Director McGarvie entitled ''Association and Union: Case for Partnership'' which summarized he views favoring affiliation as follows:

> The LPNA of Washington State was formed by members who raised strong voices for uniform education, employer respect, (and) recognition of ability as competent nurses. The issues affecting LPNs are basically unchanged—threatened identity and limiting scope of practice—neither of which can be satisfactorily handled at the bargaining table negotiations. In this state, unlike several other states, the Association is the only organization recognized as (an) advocate for licensed practical nurses by its peer groups, by the legislature, (and) by health care agencies.
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> . . . .
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> Increasing numbers of LPNs throughout the United States are turning to organized unions able to train healthcare-wise negotiators, trend analysts, (and) field representatives to counter the management battery of briefcase-carrying consultants motivated more by computerized statistics than by idealistics of dedicated patient care. The early-day, hospital-nourished antagonism for unionization of hospital LPNs only promoted exploitation, and, although it advanced acceptance of LPNAWS as the collective bargaining representative for LPNs by contract recognition, that bias has no place in today's sophisticated healthcare labor scene.

[9] Local 6's geographic jurisdiction is Washington and northern Idaho. Six other SEIU locals are located in the State of Washington.

[10] The president serves as Local 6's chief executive officer and the secretary-treasurer is essentially its chief financial and administrative officer. The vice president is vested with little authority other than to preside at meetings in the absence of the president or in the event a conflict of interest precludes the president from presiding.

[11] That fall, one of the LPN unit in Tacoma, Washington, had been the target of a raid by an AFL–CIO union. This experience apparently exposed LPNAWS to some criticism about its representation of employees.

> In my opinion, there is no compelling reason why a reliable union and our Association cannot cooperate in addressing the *total* needs of our membership in a climate of open communication and genuine respect while each retains its governing power over the service each provides. . . .

Eckley solicited comments from the membership concerning the executive board affiliation action and provided the executive board's address for that purpose.

At the February 1985 executive board meeting, the affiliation search committee submitted its written report and unanimous recommendation that LPNAWS affiliate with Local 6. This recommendation was based on the search committee's interviews with four interested area labor organizations, including the SEIU. The search committee appears to have dealt primarily with SEIU International Representative Shapiro who is assigned to that geographical area. In the preliminary discussions with the search committee, Shapiro appears to have proposed the possibility of affiliating as a separate local union or as a separate division of Local 6 which represented employees in other units at several hospitals. The search committee recommended the latter alternative.

Following a 2-hour discussion involving the LPNAWS board, Shapiro, and Marc Earls, the Local 6 president, the board accepted the recommendation of the search committee by a 9 to 0 vote with 1 abstention. The LPNAWS president then appointed a separate committee of LPNAWS executive board members to draft documents related to the proposed affiliation. McGarvie served as a resource person for this committee. The negotiations for devising terms of the affiliation centered around a prior affiliation agreement between an SEIU local union and the Massachusetts LPNA.

The April 1985 issue of *The LPN Connection* contained the official call for the 36th Annual Convention of the LPNAWS at Wenatchee, Washington, with the convention program. Appended was a document containing the terms of the proposed affiliation agreeent, statements generally supporting the affiliation by Eckley and McGarvie, a question and answer format providing information related to the affiliation (together with an invitation for further questions on this subject), and the affiliation resolution to be voted upon by the contention delegates.[12] The call to convention was the signal for the district organizations to elect state convention delegates.

At the state convention in May 1985, the delegates approved the affiliation resolution by a secret ballot vote of 70 to 3; the affiliation was to become effective upon ratification by employees in the LPNAWS-represented bargaining units.[13] In addition, the delegates selected the first 8-member Local 6 LPN division executive board contemplated by the affiliation agreement. Earls, who attended the convention as a guest speaker, announced after the convention vote that Local 6 would receive applications from LPN members for two new business representative posts in the LPN division to be established by Local 6.

Convention approval of the affiliation resolution was announced in the postconvention issue of *The LPN Connection*. In addition the same issue advised LPNAWS members that ''[t]he final decision will be made by individual vote of bargaining unit members at special meetings held in convenient locations throughout the state'' and that ''ballots would be counted on site and a running tally will be kept as the units vote.'' The article concludes by stating that ''[d]etermination by the final tally is expected to be completed by July.''[14]

C. *The Affiliation Agreement*

On July 11, 1985, Eckley and Earls executed the written affiliation agreement containing the terms of affiliation. The terms of the affiliation were to be effective on July 1, 1985.

The key element of the affiliation agreement provides as follows:

> All rights, privileges, benefits, duties and responsibilities vested in LPNAWS pursuant to voluntary recognition by employers or certifications of the National Labor Relations Board or the Public Employment Relations Commission of the State of Washington and all rights, privileges, benefits, duties and responsibilities under any of LPNAWS collective bargaining agreements, check-off provisions and authorizations and the right to enforce same shall be vested in Local 6 and assigned to its LPN Division upon ratification by vote of all members and other affected employees in the LPNAWS collective bargaining units.

Otherwise, the agreement provides that during the period of affiliation LPNAWS would ''retain its identity consistent with its own principles and policies and have full autonomy.''

The agreement provides that LPNAWS would be furnished office space and clerical assistance by Local 6 and that LPNAWS would retain title to its existing property and all accretions thereto in the future. LPNAWS had the right to continue its own dues structure, presumably for those members who were not also members of Local 6. As for those members of Local 6 who were automatically members of LPNAWS, the agreement provides for a payment by Local 6 to LPNAWS of $2 per month per member in support of LPNAWS activities. This latter payment was subject to review each year to insure its adequacy.

Local 6 agreed to amend its bylaws providing for the establishment of an LPN division within its organizational structure. Upon ratification of the affiliation by employees, all LPNAW members in collective-bargaining units were to become members of Local 6 assigned to its LPN division. The agreement specifies the amount of dues for LPN division employees for a 1-year period after which dues for the LPN division would be established in accord with the Local 6 constitution and bylaws. By paying dues to Local 6, employees as assigned to the LPN division would automatically be members of LPNAWS. The dual membership provision and

[12] State convention delegates are selected at the district association conventions. However, the concluding paragraph of the question-and-answer format suggests that all members are invited to the convention.

[13] Under LPNAWS rules, each district is permitted to elect one convention delegate for every 10 members. By this calculation there could have been 150 to 170 delegates or more. Some districts are unable to fill their quota of delegates because delegates are required to bear their own attendance expenses. Nondelegate members are free to attend as observers.

[14] At both hearings, McGarvie testified, contrary to Farrell, that the ratification outcome was dependent upon the vote of each unit. On this point, find that McGarvie's recollection is unreliable especially in light of the written announcement made to the membership immediately following the convention.

dues sharing has also been applied to the 200–300 LPNs in the existing Local 6 health care division but because those individuals are members of an overall nonprofessional unit, they remained in the Local 6 health care division.

The agreement further provides that Farrell would become a business representative in the Local 6 LPN division and would be credited by the SEIU pension trust with her LPNAWS service.[15] Local 6 also agreed to employ Ester Kaserman, the LPNAWS office manager, through December 31, 1985 (the remaining term on her contract with LPNAWS), ''to assist in the transition resulting from the affiliation.'' Kaserman was credited with her 32 years of LPNAWS service by the SEIU pension trust. McGarvie, the only other paid LPNAWS employee, remained as the LPNAWS executive director but was credited with her 17 years of LPNAWS service by the SEIU pension trust. When the affiliation became effective, all three were eligible to receive the same ''insurance, vacations, sick leave, auto expense and other such benefits which are enjoyed by officers and employees of Local 6. . . .[16]

Finally, the affiliation agreement concludes with a broad arbitration provision which provides:

> 20. Any dispute, difference of opinion or disagreement between LPNAWS and Local 6 resulting from the affiliation of the organizations shall be referred to the American Arbitration Association pursuant to its voluntary arbitration rules. The arbitrator's decision shall be final and binding on the parties. The arbitrator's fee shall be shared equally by LPNAWS and Local 6.

D. *The Ratification Process*

Notice of the time and place of the ''special meetings'' was sent to all bargaining unit employees through a joint Local 6—LPNAWS letter dated June 3, 1985. The letter advised that the purpose of the special meeting was ''to review the affiliation, to discuss its impact and to vote to ratify the convention decision.'' An enclosed schedule listed 22 meeting places throughout the state and meeting dates between June 17 and July 3. With the exception of the meetings at Anacortes and Pullman where the scheduled length of the meetings were 2 and 3 afternoon hours, respectively, the schedule allocated 5 hours—from 1 p.m. to 6 p.m.—for the meeting and polling at each location. The letter emphasized that LPNAWS members and nonmembers alike could attend, participate in the discussion, and vote.

On June 4, 1985, a memorandum was sent to the district and unit chairs which also enclosed the meeting schedule and a form notice for posting. This memorandum also advised that employees could attend and vote at a meeting place outside their own locale. These officials were urged to encourage employees to participate in the meetings and vote for the affiliation ratification.

Newspaper advertisements of the local scheduled meetings appeared in general circulation newspapers in most of the locales where the elections were to be conducted.

Either McGarvie or Farrell attended all of the ratification meetings on behalf of LPNAWS; either Earls or John Porter, the Local 6 vice president, attended all of the meetings on behalf of Local 6. Their attendance was for the purpose of responding to questions of employees who appeared and to conduct the balloting. Copies of the affiliation agreement and information related to Local 6 were available for review. Ballot boxes—locked after the box was inspected by the first voter—were provided and employees were supplied with a ballot which they could mark in secret. Eligibility lists furnished by the hospitals and sign-in sheets were maintained. At the conclusion of the polling, the ballots were tabulated and a tally prepared.

At the conclusion of the voting, the final tally reflected that 189 favored ratification of the affiliatin action; 24 opposed; and 14 challenged ballots were cast.[17] The challenged ballots—apparently cast by individuals whose names did not appear on the eligibility lists—were not counted as they were insufficient to affect the outcome.

E. *Postratification Events*

By letter dated July 12, 1985, McGarvie notified all of the hospitals of the affiliation action. After reviewing action leading to the affiliation, McGarvie's letter states:

> Effective July 1, 1985 The Licensed Practical Nurses Association of Washington State has affiliated with the Service Employees International Union, Local #6 for purposes of collective bargaining. All personnel who previously worked exclusively for the Licensed Practical Nurses Association of Washington State in the area of collective bargaining will now be working for Service Employees International Union Local #6.

By letter of August 1, 1985, Local 6 Secretary-Treasurer Spieth notified all of the Respondents (as well as all other hospitals with LPNAWS contracts) of the new dues structure established under the affiliation agreement. The letter also requested that the hospitals ''please send the July dues payment and all future dues payments to . . . Local #6'' and to ''provide a list with each monthly check-off showing the amount of dues deducted for each employee.''

Effective July 1, Farrell was hired as a Local 6 business representative and was named the coordinator of the new Local 6 LPN division. In that role she was effectively the overseer of the activities of the division. At the end of July, Riley and Jenny Mitchell, a former LPNAWS unit chair, were also hired as LPN division business representatives. However, Mitchell voluntarily quit her employment in February 1986 and Riley was laid off in October 1986 due to

[15] Before coming to LPNAWS, Farrell had been a SEIU local union representative in Oregon. Prior to that he had been a union agent of an independent union and an AFL–CIO union in Oregon.

[16] Both McGarvie and Kaserman retired on December 31, 1985. At the PERC hearing, McGarvie estimated that her SEIU pension would amount to approximately $600 per month and speculated that Kaserman's would be significantly higher because of her longer LPNAWS service. Farrell's Local 6 salary was commensurate with other Local 6 business representatives, which was $5000 per year more than she received at LPNAWS not counting health and life insurance benefits paid by Local 6.

[17] No employees appeared or voted at the Ellensburg and Shelton, Washington meetings. At Pullman, Washington, where the meeting and poll was conducted primarily for the convenience of employees of Memorial Hospital in that city, the affiliation proposition lost by a 2-yes, 3-no vote. This outcome is reflected in the final, overall tally. However, Local 6, with the concurrence of a representative of the Employer, conducted another meeting and poll at Pullman which resulted in employee approval of the affiliation measure. Thereafter, Local 6 was recognized as the LPN bargaining representative by Memorial Hospital and, consequently, that hospital was not involved in either the PERC or this proceeding.

insufficient business. As discussed more fully in the section entitled ''Further Findings and Conclusions,'' Farrell's duties and activities at Local 6 closely parallel those at LPNAWS.

No serious dispute exists over the fact that all of the Respondents eventually notified Local 6 and LPNAWS that they would not recognize the affiliation and deal with Local 6 as the LPN bargaining representative. With the possible exception of Auburn and Saint Cabrini, Respondents declined to remit checked-off dues directly to Local 6 as requested by Spieth. Instead, a check for dues monies was transmitted to LPNAWS and made payable to it. LPNAWS officials then endorsed the checks to Local 6. In October 1985, Spieth notified Virginia Mason Hospital that the schedule of dues would increase by $1 per month because of dues assessment by the LPNAWS district chapter in the Seattle area. In November, the Virginia Mason Hospital notified Spieth that it would not make the deduction unless requested to do so by LPNAWS.

Two Respondents—Virginia Mason and Yakima—raise serious issues about the timeliness of the Local 6 charge against them. Yakima administrator Linneweh wrote to both McGarvie and Earls by separate letters on October 10, 1985. He told McGarvie that in light of LPNAWS' ''decision to cease representing its members for purposes of collective bargaining . . . it is necessary that Yakima . . . withdraws its recognition of LPNAWS as representative of LPNs at Yakima.'' He told Earls that Yakima would not recognize Local 6 as the LPN representative until Local 6 was, in effect, certified following an NLRB election. Subsequently, administrators declined to meet with Farrell and other Local 6 representatives when they appeared at the hospital. By letter dated June 30, 1986, Earls again requested that Yakima bargain with Local 6. Yakima's counsel again declined based on Linneweh's October letter to Earls.

Following receipt of the McGarvie letter concerning the affiliation, Virginia Mason Administrator Olson responded in August 1985 saying that the hospital had the matter under consideration and would communicate further at a later date. In a letter to its LPN employees on August 23, Olson advised that ''we have decided not to recognize SEIU Local 6'' as the collective-bargaining representative of our LPNs.

On September 11, 1985, Local 6 Counsel Schwerin corresponded with SAHC's representative, Gravrock (the signer of the then existing LPNAWS agreement), calling attention to Olson's August 23 letter to employees. Schwerin asserted that it was ''the union's position that the proper employer under the [SAHC]—LPNAWS agreement is [SAHC] and that individual hospitals do not have the authority to refuse to bargain on their own.'' Schwerin pointedly requested SAHC's ''statement of position on this matter.'' Having received no response by September 26, Schwerin directed another letter to Gravrock again demanding a statement of position and advising that in the absence of a response, ''we will assume that Virginia Mason Hospital's position has been approved by [SAHC] and will proceed accordingly.''

Gravrock responded on October 9, 1985, to report that he planned to schedule a meeting with hospitals ''represented by [SAHC].'' However, Gravrock reported that he would be out of the country for 4 weeks and would not be able to assemble the group until mid-November. Gravrock promised to send a ''formal response'' following that meeting.

In November 1985, Farrell sent a request to Virginia Mason requesting the names and addresses of unit employees. The hospital's response advised that the request would not be honored unless it came from LPNAWS. In March 1986, Earls sent SAHC a letter opening the existing LPN contract. There is no evidence of a response.

On June 26, 1986, James Nell, SAHC's president, advised Farrell that ''this year we decline to negotiate the LPN contract on a multi-employer basis.'' Each hospital, he said, would conduct its own negotiations for a new contract to succeed the SAHC contract.

Earls sent a bargaining request to Olson on July 10, 1986. On July 22, 1986, Attorney Halvorson responded on behalf of Virginia Mason calling attention to its steadfast refusal to recognize Local 6 as the bargaining representative of any Virginia Mason employees.

At the hearing, Nell testified that SAHC members execute a new bargaining authorization agreement each contract cycle. He identified an unsigned copy of that agreement. Under it, the employer reserves the right to decide matters pertaining to union recognition. Nell claimed the signed copy from Virginia Mason was destroyed when he cleaned out his files at the end of the contract term. No official of Virginia Mason or any other SAHC-represented hospital testified concerning this matter.

F. *The Contentions*

1. The General Counsel's basic contentions

The General Counsel contends that each of the Respondents unlawfully refused to bargain by failing to recognize and bargain with Local 6, upon request, following its affiliation with LPNAWS. In his view, this affiliation did not raise a question of representation and, consequently, each of the hospitals had a duty to recognize and bargain Local 6 when requested. In addition, the General Counsel claims that Respondents St. Joseph, Auburn, and Riverton violated the Act by unilaterally altering terms and conditions of employment without providing Local 6 an opportunity to bargain concerning the changes, and that Respondent St. Joseph violated the Act when it bypassed Local 6 and dealt directly with employees in December 1985. Auburn and Riverton, the General Counsel claims, also unlawfully refused to provide Local 6 with information necessary to fulfill its role as the LPN bargaining representative at those two hospitals.

2. Respondents' basic contentions

Respondents argue that units limited to LPNs are not appropriate for bargaining and that the Board cannot compel bargaining for inappropriat units under Section 8(a)(5) of the Act. In this connection, Respondents assert that I erred by denying them the opportunity to adduce evidence showing the lack of any diversity of interest between the unit LPNs and certain other nonunit employees. All Respondents further argue that the affiliation at issue here fails to meet the standard of continuity and due process required in order to compel them to now bargain with Local 6. Virginia Mason and Yakima argue that the cases against them should be dismissed because they were brought outside the 6-month limitations period in Section 10(b) of the Act.

G. *Further Findings and Conclusions*

1. The 10(b) issue

Section 10(b) provides in pertinent part that ''no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board.'' This provision is construed as a statute of limitation which must be timely plead as an affirmative defense and proven. Yakima proved its defense; Virginia Mason did not.

By October 1985, Yakima had notified LPNAWS that it would not recognize the affiliation and that it no longer recognized even LPNAWS as the LPN representative. By that same time Local 6 was unequivocally made aware that Yakima would not recognize it without an NLRB certification and that Yakima officials would not meet at all with Farrell as a Local 6 representative. The General Counsel argues that nonetheless the June 1986 refusal by Yakima to negotiate with Local 6 constituted a separate and distinct violation. Because the charge was filed timely with respect to the June 1986 refusal, the General Counsel contends the complaint is justified. I do not agree.

By October 1985, Yakima had taken steps to completely sever the collective-bargaining relationship between it and its LPN employees. Yakima's actions plainly put Local 6 on notice by that time that it would not deal at all with Local 6. In my judgment, the limitations period commenced by at least the end of October 1985 and was not affected by the subsequent request by Local 6. Because the withdrawal of recognition severed the bargaining relationship, Local 6 had an obligation to establish a basis for its existence within the 10(b) period which it did not do. Accordingly, as the charge was no filed until July 24, 1986, I conclude that the complaint allegations based on that charge are barred by Section 10(b). Plainly, the subsequent request to bargain by Local 6 serves merely to revive a ''legally defunct unfair labor practice'' which is not permitted. *Machinists Local 1424 (Bryan Mfg. Co.)*, 362 U.S. 411 at 417 (1960). And see *Sts. Mary & Elizabeth Hospital*, 282 NLRB 73 at 77 (1986).

Virginia Mason has not proven by a preponderance of the evidence that it retained the right to decide questions of recognition independent of SAHC. Graverock's correspondence with Schwerin is puzzlingly silent about this question put to him directly by the Local 6 attorney. That, coupled with any showing that SAHC ever previously disclosed such a limitation, the lack of any corroboration from other member hospitals, the lack of any such signed agreement, and Nell's otherwise evasive manner while testifying causes me to discount his testimony on this subject. I find therefore that no showing has been made to establish Olson's authority to act in refusing to recognize Local 6 where, as here, Virginia Mason was represented for collective bargaining by SAHC until at least June 26, 1986.

2. The unit issue

Respondents' contentions that the LPN unit alleged in this complaint is inappropriate lack merit. For reasons set forth below, I find the contractual units here limited to LPNs are appropriate.

Unit appropriateness is not an absolute concept; it depends, in part, upon the context in which the unit issue arises. In contested cases of initial organization today, the Board has announced that it will group LPNs together with other hospital technical employees in a single unit. See NLRB Rule 103.30(a)(4); see further Board's Second Notice of Proposed Rulemaking 53 FR 33918–33920 (Sept. 1, 1988), reprinted 284 NLRB 1553–1556. Units limited to LPNs were deemed inappropriate under the disparity of interest test formulated by the Board in *St. Francis Hospital*, 271 NLRB 948 (1984). See *St. Luke's Hospital*, 274 NLRB 1431 (1985). And following the 1974 Health Care Amendments to the Act, separate LPN hits were found inappropriate in contested cases under the community of interest test. See *St. Catherine's Hospital*, 217 NLRB 787 (1975).

However, in *Otis Hospital*, 219 NLRB 164, 165 (1975), the Board formulated an exception to *St. Catherine's*. In *Otis Hospital*, the parties stipulated to the unit composition of three separate units, including a unit limited to LPNs. Faced with the parties' agreement on unit composition, the Board announced the following policy which I quote at length because of its obscurity to all parties here:

> [W]e conclude that in the health care industry we will give effect to all stipulation designating unit compositions that do not contravene the provisions or purposes of the Act or well-settled Board policies.
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> This conclusion is based on several considerations. First and foremost, to give the parties to our representation proceedings the broadest permissible latitude to mutually define the context in which collective bargaining should take place is consonant with the design of the Act and its stated policy to encourage the practice and procedure of collective bargaining. Such a policy demands that questions preliminary to the establishment of the bargaining relationship be expeditiously resolved. *NLRB v. O.K. Van Storage, Inc*., 29 F.2d 74, 76 (C.A. 5, 1961). The expeditious resolution of preliminary questions will be impeded if we ourselves, absent statutory command or compelling policy considerations, initiate additional delay simply because the parties' shared perspective does not comport with our own.
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> The conclusion we reach is also consistent with the legislative history surrounding passage of the health care amendments. In July 1973 Senator Taft proposed legislation to remove the Section 2(2) exemption for nonprofit hospitals. The Taft bill, S.2292, included language limiting the number of bargaining units in the health care industry. Significantly, the Taft bill also provided [t]hat units other than those set forth . . . may be agreed to by the employer and the labor organization.'' At the time the Taft bill was being considered, the American Hospital Association (AHA) proposed substantially similar legislation, most notably with respect to the limitation on the number of bargaining units. The AHA proposal similarly included a provision ''That the [B]oard may find appropriate a unit narrower in scope that is agreed upon by the employer and the bargaining representative.'' The Taft bill, S.2292, was not reported out of committee apparently in part because its unit limitations, opposed by many labor organizations, were not sufficiently flexible. However, the provisions of the Taft bill and the AHA proposal are significant only because they demonstrate that the ques-

> tion of granting employers and labor organizations the broadest permissible latitude in agreeing upon unit compositions was, throughout the legislative history, universally answered in the affirmative, even by those who proposed to limit the number and types of units which the Board could find appropriate.
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> Finally, the conclusion we reach is acknowledgment that not all health care institutions may be exactly alike. That is, we feel, the first lesson learned from the recent debates. Between categories of employees similarly titled there may be significant differences, not only in wages, hours, supervision, and the like, but more importantly in functions, responsibilities, procedures, and even expertise. Practice or standard may differ from one locale to another, not only with respect to collective-bargaining pattern but also with respect to health care delivery itself. When parties contest the emphasis to be given to such characteristics, we are, of necessity, the arbiter. When their perceptions coincide, however, candor compels the conclusion that in the absence of a statutory command or policy considerations within our own expertise, we are not the better judge.
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> With regard to the LPNs, we have recently announced, in [*St. Catherine's*], that a unit of LPNs excluding other technical employees is, in our view, contrary to the thrust of the legislative history of the recent amendments. Such a unit is, therefore, generally ''inappropriate.'' However, a unit limited to LPNs alone does not run counter to either the express provisions or the broader purposes of the Act. Nor can it be said that the unit violates well-settled Board principles: in fact the appropriateness of a unit limited to LPNs has been the source of considerable and sometimes conflicting decisional activity, both prior and subsequent to the recent amendments. We conclude that, for the reasons expressed earlier in this decision, we shall accept and deem appropriate a separate unit of LPNs if agreed upon by the parties. [Footnotes omitted.]

When the Board undertook rulemaking with respect to hospital units, it specifically considered and retained the *Otis Hospital* rule. See NLRB Rule 103.30(d) and the discussion concerning nonconforming stipulations, 53 FR 33931, 33932 (Sept. 1, 1988). Hence, it simply is an incorrect statement of law to assert that LPN units are always deemed inappropriate by the Board.

Here, the Auburn unit was certified following NLRB elections conducted in obvious conformance with the *Otis Hospital* rule.[18] In the other units, no election occurred because LPNAWS was voluntarily recognized by the remaining Respondents as the exclusive representative of units limited to LPN employees without insisting upon an NLRB election. But the voluntary nature of the evolving bargaining relationship based on recognition in that manner fulfills the same policies and objectives applied by the Board in *Otis Hospital*. For the reasons stated there, and as the Board acknowledged the continued vitality of that case when it established unit rules in this industry, I find all of the LPN units at issue in this case to be appropriate.

With that background, the Board's application of the 6-month limitation period in Section 10(b) of the Act to preclude a respondent from questioning either the unit appropriateness or the initial majority standing of the employee representative where voluntary recognition occurred more than 6 months before the conduct giving rise to the unfair labor practice charge is of significance. The Board articulated this holding in *Morse Shoe, Inc*., 227 NLRB 391 at 394 (1976):

> With respect to the [initial majority standing and unit] contentions made by Respondent, the Board has held, in light of the Supreme Court's decision in *Bryan Mfg. Co*., that an employer may not defend against a refusal-to-bargain allegation on the basis that the original recognition, occurring more than 6 months before charges had been filed in the proceeding raising the issue, was unlawful. Any such defense is barred by Section 10(b) of the Act, which, as the Court explained in *Bryan*, was specifically intended by Congress to stabilize bargaining relationships. For similar reasons we must reject Respondent's argument that the previously agreed-upon unit was inappropriate. The record herein shows that Respondent signed the assent agreement almost 10 months before it withdrew recognition from the Union and over a year prior to the time the Union filed the instant charge. Hence, it cannot now attack the Union's majority status among employees or the appropriateness of the unit. [Footnotes omitted.]

As the units involved here have been certified or voluntarily recognized for several years and have been embodied in several successive collective-bargaining agreements, *Morse Shoe* precludes Respondents from defending against the pending complaint on the ground that the LPN units are inappropriate.

This finding is not at variance with *NLRB v. Cardox Div. of Chemetron Corp*., 699 F.2d 148 (3d Cir. 1983), and similar cases cited by several Respondents. In *Cardox* the employer voluntarily recognized the union in late August as the bargaining agent for two of its four field service employees and commenced negotiations. In December, the employer was advised that one of the two unit employees was no longer a unit member. The employer declined to meet further with the union on the ground that no reason existed to negotiate an agreement for the remaining employee. The union charged the employer with refusing to bargain.

The administrative law judge dismissed the *Cardox* complaint on the ground that the recognized unit was inappropriate. Although the Board tacitly acknowledged that the unit would likely be inappropriate in an initial certification context, it nonetheless rejected the employer's unit claims, first made at the hearing, as a ''belated attempt to repudiate the voluntary recognition.'' Relying on prior cases where bargaining had been ordered in units it would not normally certify, the Board concluded that acceptance of the employer's unit claim would ''fly in the face of our statutory obligation to promote stability in bargaining relationships.'' As a reasonable time for bargaining had not passed, the Board held that the union enjoyed a conclusive presumption of majority

[18] So too was the Yakima unit but in view of my ruling with respect to the timeliness of the Yakima charge, I do not treat that matter further herein.

which precluded the employer's unit appropriateness defense. Accordingly, the Board reversed the administrative law judge and ordered a bargaining to resume.

The Third Circuit refused to enforce the Board's order. In the court's view, a bargaining order under Section 8(a)(5) was linked to the requirements of Section 9(b) of the Act which requires the Board to decide unit appropriateness ''in each case.'' In the court's view, the Board could not order bargaining without deciding specifically whether the unit agreed upon by the parties was appropriate. All that was required, the court said, was for the Board make a determination that ''the unit agreed upon by the parties is not inconsistent with the National Labor Relations Act and past Board policy.'' As the Board had not done so, the court remanded the case to the Board.

In this case, I have made a specific 9(b) finding that the LPN units are appropriate on the basis of *Otis Hospital*. The *Cardox* court specifically cited *Otis Hospital* as the type of determination it expects. Here that determination was made and, consequently, the objection present in *Cardox* is inapplicable.

The General Counsel has alleged a generic unit limited to LPNs in his complaint. The unit descriptions in the most recent LPNAWS contracts at these hospitals vary to some degree in specificity. In some, LPNs not employed in the nursing occupation are specifically excluded and a classification called graduate practical nurses are specifically included. The finding of appropriateness here applies to the specific units contained in the most recent LPNAWS agreements.

3. The affiliation issue

Issues arising around union mergers and affiliations often produce vexing and complex questions. The first such case to reach the U.S. Supreme Court was *NLRB v. Food & Commercial Workers*, 475 U.S. 192, 199–200, 204, 205–206 (1986) (*Seafirst*), where the Court granted certiorari to resolve the conflict in decisions among the courts of appeals concerning the Board's authority in these cases to insist that all bargaining unit employees—not just union members—must be permitted to vote on union affiliation matters. Although that issue is not present here, the Court, after carefully articulating the Board's policies in this area, repeatedly emphasized the limits of Board authority in this area as follows:

> The Board ordinarily required that the affiliation election be conducted with adequate ''due process'' safeguards, including notice of the election to all members, an adequate opportunity for members to discuss the election, and reasonable precautions to maintain ballot secrecy. Second, that there was substantial ''continuity'' between the pre and postaffiliation union. The focus of this inquiry was whether the affiliation had substantially changed the union; the Board considered such factors as whether the union retained local autonomy and local officers, and continued to follow established procedures. If the organizational changes accompanying the affiliation were substantial enough to create a different entity, the affiliation raised a ''question concerning representation'' which could only be resolved through the Board's election procedure. However, as long as continuity of representation and due process were satisfied, affiliation was considered an internal matter that did not affect the union's status as the employees' bargaining representative, and the employer was obligated to continue bargaining with the reorganized union.
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> [T]he Board exceeded its statutory authority by requiring that nonunion employees be allowed to vote in the union's affiliation election. This violated the policy of Congress incorporated into the Act against outside interference in union decisionmaking.
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> While the Board is charged with responsibility to administer [representation procedures established by the Act], the Act gives the Board no authority to require unions to follow other procedures in adopting organizational changes.
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> [T]he Act allows union members to control the shape and direction of their organization.
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> If [administrative or organizational] changes are sufficiently dramatic to alter the union's identity, affiliation may raise a question of representation, and the Board may then conduct a representation election. Otherwise, the statute gives the Board no authority to interfere in the union's affairs. [Footnotes and citations omitted.]

In *Western Commercial Transport*, 288 NLRB 214 (1988), —cited by all Respondents here—the Board approached the continuity question with guidance from *Seafirst* to determine if there were ''sufficiently dramatic'' changes in the pre and postaffiliation organizations to warrant a determination that the change produced a question concerning representation. The Board articulated the scope of this examination as follows:

> Factors mentioned in decisions dealing with the question of continuity of representative have included the following: continued leadership responsibilities by the existing union officials; the perpetuation of membership rights and duties, such as eligibility for membership, qualification to hold office, oversight of executive council activity, the dues/fees structure, authority to change provisions in the governing documents, the frequency of membership meetings, the continuation of the manner in which contract negotiations, administration, and grievance processing are effectuated; and the preservation of the . . . union's physical facilities, books, and assets. [Footnote omitted.]

However, in *May Department Stores v. NLRB*, 897 F.2d 221 (7th Cir. 1990) (unofficially reported at 133 LRRM 2750), the court also observed with citations to both Board and court of appeals cases that:

> No strict checklist is used, however. The Board considers ''the totality of a situation.'' Continuity is evi-

> denced by the maintenance of trace of a preexisting identity and autonomy over the day-to-day administration of bargaining agreements. [Citations omitted.]

Applying the due process test required, I am satisfied that this affiliation was accomplished with adequate due process safeguards.

With respect to this test, Respondents complain that the evidence does not support the conclusion that notice of an election was adequate, that employees were provided with inadequate opportunity to discuss the election, and that there was no showing that the balloting was secret. For the most part, Respondents assert that these claims are justified inferences from the low turnout for the 22 ratification elections held around the State of Washington. In my judgment, such a sweeping inference is unwarranted.

The evidence shows that this affiliation occurred as a result of a grassroots employee initiative within the LPNAWS organization. Beginning with the adoption of the resolution to affiliate with Local 6, and continuing at every step along the way to affiliation, employee-members were advised of the actions taken by officials of that organization and comments of members were solicited. Overall the process took 6 months. No serious or significant opposition developed.

Election notice schedules were sent to all members. All of the unit chairs were asked to post notices of the elections in their hospitals. Election notices were advertised in the most widely read newspaper publications in most areas. No evidence was produced that any employee was unaware of the ratification elections.

Earls and Farrell both testified repeatedly that the balloting was conducted by secret ballot. The record reflects the use of eligibility lists obtained from the hospitals, a ballot box, ballots, and a challenge procedure. The record does not contain a detailed description of the procedure employed to permit employees to mark their ballots secretly and it is this deficiency which forms the basis of the lack of secrecy argument. This argument lacks merit. In the absence of contradictory evidence, the conclusionary evidence of secrecy provided by Earls and Farrell—whom I found to be highly credible—suffices.

No inference of due process defects can reasonably be made from the low turnout at the ratification elections. This was the third and final step in the affiliation process. Obviously, this issue was the primary question before the 1985 LPNAWS Convention. This record strongly suggests that the important organizational decisions of LPNAWS had always been made through its convention process. These conventions are always preceded by the convention call outlining the business to be conducted and delegate selection is then made on a district-by-district basis. It is reasonable to infer that this delegate selection process produced widespread discussion concerning the business of the convention. In these circumstances, it is more reasonable to conclude that the ratification elections were viewed as an insignificant step in the affiliation process. Nothing in the LPNAWS governing documents require membership ratification of convention action; instead this requirement is the product of NLRB case law. The fact that these members did not avail themselves of this opportunity is not evidence of a defect in the process.

With respect to the continuity test, Respondents' briefs provide an exhaustive comparison of the pre and postaffiliation officers and governing documents of LPNAWS and Local 6—and even a few comparisons of LPNAWS with Service Employees International Union (SEIU). Although these comparisons suggest dramatic differences, adopting Respondents' approach can only lead to fundamental error because it effectively imposes a mechanical and often meaningless checklist derived from precedent without regard to the right of the affiliating unions to devise their own organizational structure.

The latitude provided labor organizations to fashion their own structures in *Seafirst* should not be silently swept away by the cumulative effect of lesser precedent. There is little difference between establishing rule defining passable organizational structures and the brick-by-brick approach of precedent to achieve the same result. Whether the formula comes from a rule or from precedent, the right of union members to devise their own structure, preserved by the Act, is lost. The import of *Seafirst* requires an examination of each affiliation arrangement on its own merit.

LPNAWS over the years had become a dual-purpose organization. Initially, it was strictly a professional association advancing the interests of practical nursing on a variety of fronts. In the past few decades it also took on the characteristics of a specialized labor organization through its economic security program.

Realistically speaking, the LPNAWS economic security program—employee representation in collective bargaining—was conducted lock, stock, and barrel by the paid professionals of LPNAWS with skeletal policy control by that organization's elected or appointed officials. This is dramatically illustrated by Farrell's insistence that the Economic Security Committee adopt strike guidelines to relieve her of sole responsibility in this area when it appeared one of the units would have to strike to enforce its demands. Otherwise, collective bargaining and contract administration was almost entirely a matter between the LPNAWS paid professional assisted by the unit chair and the unit members. Consequently, preaffiliation references to the LPNAWS bylaws as they relate to collective bargaining simply exalts form over substance.

Equally meaningless is a comparison of pre and postaffiliation officers of the two organizations. There was never any intention that LPNAWS would cease to exist. Instead, the LPNAWS-Local 6 affiliation agreement contemplates a unique, continuing partnership preserving total autonomy for the continuation of LPNAWS' historical professional nursing activities while its economic security activities were conducted by Local 6 under terms which these two parties agreed upon. This joint structure preserved significant autonomy and continuity within Local 6 for both present and future LPN bargaining units through the establishment of the LPN division headed by the same professional official who performed the day-to-day collective-bargaining activities for LPNAWS.

With respect to those activities, there is no significant difference between the manner in which the two organizations have historically operated; even before affiliation their approaches to representing employees was highly compatible, especially in recent years. Thus, now, as before, Farrell solicits suggestions from unit employees and translates them into bargaining proposals. The unit chairs, selected in the same manner as they were selected when LPNAWS acted on its

own, serve as conduits between Farrell and the unit employees. As before, Farrell serves as the principal negotiator and late stage grievance processor. Employees in each separate unit decide by majority vote contract acceptance and strike issues. Earls now signs new collective-bargaining agreements along with Farrell and the unit chair, but this occurs only after Farrell has legally committed Local 6 to the contract.

Although Earls and other Local 6 officials and representatives have participated to some degree in LPN negotiations and unit servicing since the affiliation, these instances involve situations where Farrell is not readily available or where she calls upon them as a resource. At the same time Farrell continues to utilize the LPNAWS executive director, as she did before as a resource on technical nursing questions which arise in collective bargaining or grievance processing. As the coordinator of the LPN division, Farrell effectively decides—as she did at LPNAWS—which grievances are arbitrated and which are not. The SEIU involvement in strike, contract, and grievance matters is limited to assuring against illegal actions; no evidence shows that this review in any practical way extends to lawful substantive matters.

Local 6 is bound to the terms and provisions of the affiliation agreement indefinitely. It is not, for example, free to unilaterally discontinue the separate LPN division, to exclude LPN participation on its executive board, to assign LPN bargaining units to the other divisions in Local 6, to refuse LPNAWS with office space or clerical assistance without charge, or to refuse financial support in sufficient amounts to meet LPNAWS professional activities. Legally, Farrell's status would even appear to be something beyond that of an ''at will'' employee at Local 6. In future years, it is not free to ignore the LPN requirement for professional representatives who service the LPN division. To the extent that it does not now have such a representative on its staff appears in part due to this case.

The arbitration provision in the affiliation agreement provides LPNAWS with a mechanism to assure future compliance with the terms of the agreement. Eckley's early characterization of affiliation as a mechanism ''for divesting LPNAWS of major responsibility'' for collective-bargaining activities depends entirely on the degree to which LPNAWS in the future enforces its rights under the affiliation agreement.

Respondents argue, in effect, that more weight should be accorded to the sterile words of the governing documents of these two organizations than the manner in which they operate on a day-to-day basis and are allied to each other. In particular, they accord little significance to the nearly identical manner in which Farrell has operated both before and after the affiliation. In my judgment, this approach is seriously flawed. This record strongly suggests that in the absence of affiliation a replacement of professional representatives at LPNAWS could result in far more dramatic alterations in employee representation than occurred by this affiliation. This affiliation at least appears to institutionalize the type of representation employees received during Farrell's term at LPNAWS.

Based on the foregoing analysis, I find that this affiliation has not produced sufficiently dramatic changes as to alter the representative's identity; on the contrary, it has preserved, in my judgment, far more than mere ''traces'' of LPNAWS' preexisting identity.

For the foregoing reasons I find that all Respondents, save Yakim, violated Section 8(a)(5) by refusing to recognize Local 6 as the LPN representative following its affiliation with LPNAWS as charged in the complaint.

4. Other issues

Auburn and Riverton are charge with failing to provide the Union with information concerning distributions of funds from a pension plan unilaterally discontinued during the contract term and with failing to bargain about those distributions. They admit this conduct is unlawful if their claims concerning the affiliation and the appropriateness of the unit lack merit. Having so concluded, I find Auburn and Riverton violated Section 8(a)(5) of the Act by this added conduct.

St. Joseph is also charged with dealing directly with its LPN employees to solicit proposals concerning terms and conditions of employment in December 1985 and by unilaterally implementing new terms and conditions of employment in February 1986. St. Joseph's agent, Scott Houston, admitted this conduct at the hearing. I find that it violated Section 8(a)(5) by this added conduct.

II. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondents set forth above, occurring in connection with their business operations, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Local 6 is a labor organization within the meaning of Section 2(5) of the Act.
3. By refusing to recognize and bargain with Local 6 as the representative of their employees, all Respondents, except Yakima, engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.
4. By refusing to furnish Local 6 with information concerning the distributions made following the discontinuance of the pension plan applicable to its LPN employees and provide Local 6 with the opportunity to negotiate concerning those distributions, Respondents Auburn and Riverton engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.
5. By dealing directly with its LPN employees concerning, and unilaterally implementing, new terms and conditions of employment for those employees, Respondent St. Joseph engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.
6. The charge filed against Respondent Yakima is not timely within the meaning of Section 10(b) of the Act.

REMEDY

Having found that all Respondents except Yakima have engaged in certain unfair labor practices, the recommended Order requires those Respondents to cease and desist therefrom and to take the following affirmative action designed to effectuate the policies of the Act.

Respondents are ordered to meet and bargain with Local 6, upon request, as the representative of their LPN employees in the units described in each of their most recent collective-bargaining agreement with LPNAWS. Respondents Auburn and Riverton are ordered to furnish the information previously requested concerning the discontinued pension plan and thereafter, upon request, meet and bargain with Local 6 concerning that action. Respondent St. Joseph is ordered to rescind, upon request by Local 6, the terms and conditions of employment for its LPN employees implemented in February 1986.

The record reflects that the refusal to recognize Local 6 occurred during a contract term at each location. Those agreements all provide for dues checkoff where authorized by the individual unit employee. There is some evidence of a change in the dues structure which was not honored. For this reason, the Order requires Respondents to reimburse Local 6 for dues which it was lawfully entitled under the LPNAWS contracts. Respondents are entitled to offset any dues payments made to Local 6 by individuals as well as those dues transmitted to LPNAWS following the affiliation which were transferred to Local 6 by LPNAWS. *Ogle Protection Service*, 183 NLRB 682 (1970). Determination of the amounts due, if any, is left to the compliance stage this proceeding.

Finally, Respondents are required to post the applicable notice to employees attached hereto. The Regional Director is authorized to insert the correct hospital name when supplying copies of Appendix A.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[19]

ORDER

A. The Respondents, Central Washington Hospital, Wenatchee, Washington, St. Luke's General Hospital, Highline Community Hospital, Saint Cabrini Hospital of Seattle, Ballard Community Hospital, and Virginia Mason Hospital, Seattle, Washington, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Service Employees International Union Local 6, AFL–CIO as the exclusive collective-bargaining representative of the those licensed practical nurse employees and others in the appropriate unit described in the most recent collective-bargaining agreements which they entered into with the Licensed Practical Nurses Association of Washington State.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights provided in Section 7 of the Act, or refusing to recognize and bargain with Service Employees International Union Local 6 as the representative of employees in the above appropriate unit applicable to them.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with Service Employees International Union Local 6, AFL–CIO as the representative of employees in the above appropriate unit applicable to them.

(b) Reimburse Service Employees International Union Local 6, AFL–CIO for any dues it failed to check off and remit pursuant to the most recent collective-bargaining agreements with the Licensed Practical Nurses Association of Washington State following the affiliation of those two labor organizations in July 1985 as specified in the remedy section of this decision.

(c) Post at their respective hospitals copies of the attached notice marked ''Appendix A.'' Copies of the notice, on forms provided by the Regional Director for Region 19, National Labor Relations Board, after being signed by the Respondents' authorized representative, shall be posted by each Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

B. The Respondents, Universal Health Systems, Inc. of Pennsylvania d/b/a Auburn General Hospital, and d/b/a the Riverton Hospital, Auburn and Seattle, Washington, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Service Employees International Union Local 6, AFL–CIO as the exclusive collective-bargaining representative of those licensed practical nurse employees and others in the appropriate unit described in the most recent collective-bargaining agreements which they entered into with the Licensed Practical Nurses Association of Washington State.

(b) Refusing to furnish Service Employees International Union Local 6, AFL–CIO with information it requested concerning distributions from a discontinued pension plan applicable to employees in the above appropriate units and, thereafter, bargaining upon request concerning those distributions.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights provided in Section 7 of the Act, or refusing to recognize and bargain with Service Employees International Union Local 6, AFL–CIO as the representative of employees in the above appropriate unit applicable to them.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with Service Employees International Union Local 6, AFL–CIO as the representative of employees in the above appropriate unit applicable to them.

(b) Furnish Service Employees International Union Local 6, AFL–CIO with information it requested concorning distributions from a discontinued pension plan applicable to employees in the above appropriate units and, thereafter, bargaining upon request concerning those distributions.

(c) Reimburse Service Employees International Union Local 6, AFL–CIO for any dues it failed to check off and remit pursuant to the most recent collective-bargaining agreements with the Licensed Practical Nurses Association of Washington State following the affiliation of those two labor organizations in July 1985 as specified in the remedy section of this decision.

[19] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Post at their respective hospitals copies of the attached notice marked ''Appendix B.'' Copies of the notice, on forms provided by the Regional Director for Region 19, National Labor Relations Board, after being signed by the Respondents' authorized representative, shall be posted by each Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

C. The Respondent, St. Joseph Hospital, Bellingham, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Service Employees International Union Local 6, AFL–CIO as the exclusive collective-bargaining representative of those licensed practical nurse employees and others in the appropriate unit described in the most recent collective-bargaining agreements which it entered into with the Licensed Practical Nurses Association of Washington State.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights provided in Section 7 of the Act, or refusing to recognize and bargain with Service Employees International Union Local 6, AFL–CIO as the representative of employees in the above appropriate unit.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with Service Employees International Union Local 6, AFL–CIO as the representative of employees in the above appropriate unit.

(b) Upon request by Service Employees International Union Local 6, AFL–CIO rescind the terms and conditions of employment unilaterally implemented concerning employees in the above appropriate unit in February 1986.

(c) Reimburse Service Employees International Union Local 6, AFL–CIO for any dues it failed to check off and remit pursuant to the most recent collective-bargaining agreement with the Licensed Practical Nurses Association of Washington State following the affiliation of those two labor organizations in July 1985 as specified in the remedy section of this decision.

(d) Post at its hospital copies of the attached notice marked ''Appendix C.''[20] Copies of the notice, on forms provided by the Regional Director for Region 19, National Labor Relations Board, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

The complaint is dismissed as it relates to Respondent Yakima Valley Memorial Hospital.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL recognize and bargain with Service Employees International Union Local 6, AFL–CIO as the exclusive collective-bargaining representative of licensed practical nurse employees and others in the appropriate unit described in our most recent collective-bargaining agreement with the Licensed Practical Nurses Association of Washington State.

WE WILL reimburse Service Employees International Union Local 6, AFL–CIO for any dues we failed to check off and remit pursuant to the most recent collective-bargaining agreement with the Licensed Practical Nurses Association of Washington State following the affiliation of those two labor organizations in July 1985 as required by law.

(NAME OF SPECIFIC HOSPITAL)

APPENDIX B

WE WILL recognize and bargain with Service Employees International Union Local 6, AFL–CIO as the exclusive collective-bargaining representative of our licensed practical nurse employees and others in the appropriate units described in our most recent collective-bargaining agreements with the Licensed Practical Nurses Association of Washington State.

WE WILL reimburse Service Employees International Union Local 6, AFL–CIO for any dues we failed to check off and remit pursuant to the most recent collective-bargaining agreements with the Licensed Practical Nurses Association of Washington State following the affiliation of those two labor organizations in July 1985 as required by law.

WE WILL furnish Service Employees International Union Local 6, AFL–CIO with information it requested concerning distributions from a discontinued pension plan applicable to

[20] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

employees in the above appropriate units and, thereafter, bargaining upon request concerning those distributions.

UNIVERSAL HEALTH SYSTEMS, INC. OF PENNSYLVANIA D/B/A AUBURN GENERAL HOSPITAL AND D/B/A THE RIVERTON HOSPITAL

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT bypass the representative of our employees in the unit described below in formulating and implementing wages, hours, and other terms and conditions of employment applicable to them.

WE WILL recognize and bargain with Service Employees International Union Local 6, AFL–CIO as the exclusive collective-bargaining representative of our licensed practical nurse employees and others in the appropriate unit described in our most recent collective-bargaining agreement with the Licensed Practical Nurses Association of Washington State.

WE WILL reimburse Service Employees International Union Local 6, AFL–CIO for any dues we failed to check off and remit pursuant to the most recent collective-bargaining agreement with the Licensed Practical Nurses Association of Washington State following the affiliation of those two labor organizations in July 1985 as required by law.

WE WILL upon request by Service Employees International Union Local 6, AFL–CIO rescind the terms and conditions of employment unilaterally implemented concerning employees in the above appropriate unit in February 1986.

ST. JOSEPH HOSPITAL